

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICOLE PAULTRE BELL, as Administratrix of the Estate
of SEAN ELIJAH BELL, and on behalf of his infant
children, JADA BELL and JORDYN BELL and NICOLE
PAULTRE BELL individually, JOSEPH GUZMAN and
TRENT BENEFIELD,

Plaintiffs,

- against -

THE CITY OF NEW YORK, THE NEW YORK
CITY POLICE DEPARTMENT, P.O. PAUL
HEADLEY, P.O. MICHAEL CARY, P.O. MARC
COOPER, P.O. GESCARD ISNORA and P.O.
MICHAEL OLIVER,

Defendants.

**ANSWER TO CO-
DEFENDANTS MARC
COOPER, GESCARD
ISNORA, MICHAEL
OLIVER, AND MICHAEL
CAREY'S CROSS CLAIMS
ON BEHALF OF
DEFENDANTS CITY OF
NEW YORK, NEW YORK
CITY POLICE
DEPARTMENT, AND
DETECTIVE PAUL
HEADLEY**

CV 07-2994 (SJ)(RLM)

Jury Trial Demanded

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Defendants City of New York, New York City Police Department, and Detective Paul Headley ("City Defendants"), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for their Answer to co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver's "Answer with Cross-Claims," dated June 14, 2010, and to "Michael Carey's Answer, Cross-Claims and Counterclaim," dated June 18, 2010, respectfully allege, upon information and belief, as follows:

1. City Defendants repeat and re-allege each and every paragraph of their Answer to Complaint, dated June 18, 2010, as if fully set forth herein, including all affirmative defenses set forth therein.

2. State the allegations set forth in the paragraph denominated “88,” in the “Answer with Cross-Claims” filed by co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver are conclusions of law, rather than averments of fact, to which no response is required.

3. Deny the allegations set forth in the paragraph denominated “89,” in the “Answer with Cross-Claims” filed by co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver.

4. Deny the allegations set forth in the paragraph denominated “90,” in the “Answer with Cross-Claims” filed by co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver, except state that the allegation that “[a]ll of the actions of defendants Cooper, Isnora, and Oliver were performed within the performance of their duties and within the scope of their employment as New York City Police Officers” is a conclusion of law, rather than an averment of fact, to which no response is required.

5. Deny the allegations set forth in the paragraph denominated “91,” in the “Answer with Cross-Claims” filed by co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver.

6. Deny the allegations set forth in the paragraph denominated “92,” in the “Answer with Cross-Claims” filed by co-defendants Marc Cooper, Gescard Isnora, and Michael Oliver.

7. Deny the allegations set forth in the paragraph denominated “1,” under the heading “Cross Claims: First Cross-Claim” in “Michael Carey’s Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey.

8. Deny the allegations set forth in the paragraph denominated “2,” under the heading “Cross Claims: First Cross-Claim” in “Michael Carey’s Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey.

9. Deny the allegations set forth in the paragraph denominated “3,” under the heading “Cross Claims: Second Cross-Claim” in “Michael Carey’s Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey, except respectfully refer the Court to General Municipal Law Section 50-k for a recitation of the duties of the City of New York with regard to indemnification.

10. Deny the allegations set forth in the paragraph denominated “4,” under the heading “Cross Claims: Third Cross-Claim” in “Michael Carey’s Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey, except state that the allegation that “any alleged act or omission from which such judgment or settlement arose would have occurred while [Carey] was properly and lawfully acting within the scope of his public employment and in the discharge of his duties and he was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained” is a conclusion of law, rather than an averment of fact, to which no response is required, and respectfully refer the Court to General Municipal Law Section 50-k for a recitation of the duties of the City of New York with regard to indemnification.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER AND CAREY:

11. The cross claims fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:

12. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:

13. At all times relevant to the incident, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:

14. To the extent Defendants Cooper, Isnora, Oliver, and Carey assert state law claims against the City of New York, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:

15. Defendants Cooper, Isnora, Oliver, and Carey's cross-claims against defendant City are not ripe for adjudication.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:

16. Any injury alleged to have been sustained by plaintiffs was not the proximate result of conduct on the part of defendant City of New York, the New York City Police Department, or Detective Paul Headley and resulted in whole or in part from the culpable, negligent and/or intervening conduct of defendants Cooper, Isnora, Oliver, and/or Carey.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS OF CO-DEFENDANTS COOPER, ISNORA, OLIVER, AND CAREY:


17. Defendants Cooper, Isnora, Oliver, and Carey's cross claims may be barred in part by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, the City Defendants request judgment dismissing the cross-claims of co-defendants Marc Cooper, Gescard Isnora, Michael Oliver, and Michael Carey, as against them with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 28, 2010

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By:


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Docket No.: CV 07-2994 (SJ)(RLM)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NICOLE PAULTRE BELL, as Administratrix of
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**ANSWER TO CO-DEFENDANTS MARC COOPER,
GESCARD ISNORA, AND MICHAEL OLIVER'S
ANSWER WITH CROSS-CLAIMS AND MICHAEL
CAREY'S ANSWER WITH CROSS-CLAIMS AND
COUNTERCLAIM**

MICHAEL A. CARDOZO

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Due and timely service is hereby admitted.

New York, N.Y., 2010

..... Esq.

Attorney for